

16-369 LOS ANGELES COUNTY, CA V. MENDEZ

DECISION BELOW: 815 F.3d 1178

LOWER COURT CASE NUMBER: 13-56686, 13-57072

QUESTION PRESENTED:

In a 42 U.S.C. § 1983 action, the district court concluded Los Angeles County Sheriff's Department ("LASD") deputies *did not use excessive force* in shooting the plaintiffs in violation of their Fourth Amendment rights, based upon the factors set forth by this Court in *Graham v. Connor*, 490 U.S. 386 (1989), as the deputies reasonably feared for their safety at the time of the shooting. However, the deputies were nevertheless found liable under the "provocation" rule created by the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"). This Court has not yet agreed or disagreed with the Ninth Circuit's "provocation" rule, but has noted the doctrine has been "sharply questioned" by other Courts of Appeals. *City & Cnty. of S.F. v. Sheehan*, 135 S.Ct. 1765, 1777 n.4 (2015). The questions presented are:

1. Whether the Ninth Circuit's "provocation" rule should be barred as it conflicts with *Graham v. Connor* regarding the manner in which a claim of excessive force against a police officer should be determined in an action brought under 42 U.S.C. § 1983 for a violation of a plaintiff's Fourth Amendment rights, and has been rejected by other Courts of Appeals?

2. Whether, if the "provocation" rule is upheld, the qualified immunity analysis must be tailored to require a reviewing court to determine whether *every* reasonable officer in the position of the defendant would have known his unlawful conduct would *provoke a violent confrontation* under the specific facts of the case, as this is the conduct for which the Ninth Circuit imposes constitutional liability despite a *reasonable* use of force under the Fourth Amendment?

3. Whether, in an action brought under 42 U.S.C. § 1983, an incident giving rise to a *reasonable* use of force is an intervening, superseding event which breaks the chain of causation from a prior, unlawful entry in violation of the Fourth Amendment?

GRANTED LIMITED TO QUESTIONS 1 AND 3 PRESENTED BY THE PETITION.

CERT. GRANTED 12/2/2016